

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**JOHN ROBERT DEMOS,**

**Petitioner,**

**vs.**

**PATRICK GLEBE,**

**Respondent.**

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**Case No. 10-CV-125-GKF-PJC**

**OPINION AND ORDER**

On March 1, 2010, the Court received for filing Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus (Dkt. # 1) and motion to proceed *in forma pauperis* (Dkt. # 2). Petitioner appears *pro se* and states that he is challenging his convictions for First Degree Attempted Rape and First Degree Burglary, entered June 9, 1978,<sup>1</sup> in King County Superior Court, Seattle, Washington. He is presently incarcerated at the Stafford Creek Correctional Center in Aberdeen, Washington, serving a life sentence. See Dkt. # 1. Petitioner further states that he is a Native American and claims, *inter alia*, that numerous statutes and treaties are unconstitutional, that he cannot be charged with a felony in a state court, that he cannot be charged and convicted in a state military court, and that the state court lacked jurisdiction because the State of Washington is Indian Land. Id. He requests an evidentiary hearing, a jury trial, appointment of counsel, immediate release from custody pending resolution of this matter, and \$1,000,000 dollars as the "amount in controversy." See id.

Based on representations contained in the motion to proceed *in forma pauperis*, the Court finds Petitioner lacks sufficient funds to pay the filing fee. Therefore, his motion should be granted.

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<sup>1</sup>Petitioner states that the judgment of conviction was entered June 9, 1974, and that he was sentenced to life imprisonment on June 9, 1978. See Dkt. # 1.

Petitioner's challenge to his conviction and ongoing custody is improperly filed in this Court. A habeas corpus petition must be filed in the district in which the prisoner and/or the sentencing court is located. See 28 U.S.C. § 2241(d); Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004); Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000); Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996). Petitioner is confined at Aberdeen, Grays Harbor County, Washington, and was sentenced in King County, Washington, both located in the territorial jurisdiction of the United States District Court for the Western District of Washington. See 28 U.S.C. § 128(b). Thus, any petition for writ of habeas corpus must be filed in the United States District Court for the Western District of Washington. No authority provides jurisdiction for this Court to consider Petitioner's challenge to his conviction and confinement.

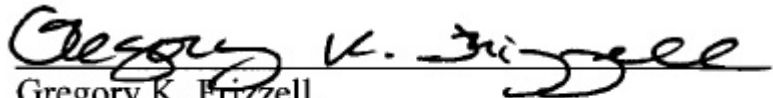
Under 28 U.S.C. § 1406(a), "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). It is this Court's opinion that the interest of justice will not be served by transferring this case to the district court where Petitioner was sentenced and is presently incarcerated. Between 1991 and 2004, Petitioner filed twenty-five (25) habeas corpus actions in the Western District of Washington. See [www.pacer.uspci.uscourts.gov](http://www.pacer.uspci.uscourts.gov). He has also filed at least 100 other habeas corpus actions in federal courts around the country. Id. In the past two months, or since January 1, 2010, Petitioner has filed eight (8) habeas corpus actions in other federal district courts. Id. Based on that history, it would be inappropriate to transfer this matter, see In re Cline, 531 F.3d 1249 (10th Cir. 2008), as it clearly appears petitioner pursued habeas relief in the past without success, and is now subject to statutory restrictions on pursuing a second or successive habeas corpus petition. See 28 U.S.C. § 2244(b)(3)

(setting out procedure for seeking authorization from appropriate court of appeals to file second or successive § 2254 petition in district court). This matter shall be dismissed without prejudice for lack of jurisdiction.

**ACCORDINGLY IT IS HEREBY ORDERED that:**

1. Petitioner's motion to proceed *in forma pauperis* (Dkt. # 2) is **granted**.
2. The petition for writ of habeas corpus (Dkt. # 1) is **dismissed without prejudice for lack of jurisdiction**.
3. This is a final Order terminating this action.

DATED THIS 22nd day of March, 2010.

  
Gregory K. Frizzell  
United States District Judge  
Northern District of Oklahoma